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DEFENDANT'S BIFURCATED ANSWER AND COUNTERCLAIM

5. The Court will observe that the Defendant served a highly unorthodox letter upon the Clerk of the Court (Doc. No. 36, 10/11/2018 [herein **LETTER**]). In Defendant's LETTER the following is stated:

> Please take notice that I, Defendant Jason Goodman, in the matter of D. George Sweigert v Jason Goodman 1:18-cv-08653-UA intend to file a counterclaim. [emphasis added]

6. In New York a counterclaim may accompany an answer pursuant to CPLR § 3011. There is no procedure to support bifurcating the two (2). CPLR § 3011 states:

Kinds of pleadings

There shall be a complaint and an answer. An answer may include a counterclaim against a plaintiff and a cross-claim against a defendant. A defendant's pleading against another claimant is an interpleader complaint, or against any other person not already a party is a third-party complaint. There shall be a reply to a counterclaim denominated as such, an answer to an interpleader complaint or third-party complaint, and an answer to a cross-claim that contains a demand for an answer. If no demand is made, the cross-claim shall be deemed denied or avoided. There shall be no other pleading unless the court orders otherwise. [emphasis added]

7. The Plaintiff objects to being forced into a limbo state orbiting the Defendant while awaiting his bifurcated "counter-claim", as announced in the highly unorthodox LETTER (Doc. 36) to the Clerk of the Court. The Defendant has not been officially summoned and/or served (a deficiency corrected by the Defendant's appearance (Doc. No. 34, 10/10/2018 [APPEARANCE]).

DEFENDANT'S ATTEMPTED SERVICE VIA E-MAIL MESSAGE

8. On 10/11/2018 the Defendant attempted to send an electronic mail message to the Plaintiff that purported has an ANSWER and CERTIFICATE OF SERVICE attached as PDF documents. However, the Plaintiff has made no prior arrangements with the Defendant to receive pleadings via electronic transmission. Again, this is an unorthodox activity undertaken by the Defendant by his own volition.

MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINITIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER OR OTHERWISE MAKE MOOT PURSUANT TO FRCP RULE 12(F)

- 9. Interesting (as explained in the verified exhibits attached to this pleading) the file "Certificate of Service" contain indicators of a computer virus (see Exhibit One [Exh. 1]. Therefore, the Plaintiff made no attempt to read or act on any of the attached files, save to have them scanned for malicious software code.
- 10. As indicated in verified **Exh. 1**, the following error message was displayed in the Plaintiff's GMAIL client:

Encrypted attachment warning

- Be careful with this attachment. This message contains 1 encrypted attachment that can't be scanned for malicious content. Avoid downloading it unless you know the sender and are confident that this email is legitimate.
- The Plaintiff attests that the e-mail attachment "Certificate of Service" could NOT be scanned by several on-line virus detection services (see Exh. 2, 3 and 4). This situation is normally an indicator of a "zero day" virus or other sophisticated embedded malware.

SUMMARY

- The Defendant has proceeded ahead at his own peril and volition to file a barrage of documents that are riddled with errors which are prejudicial to the Plaintiff. Defendant's papers are fatally defective for several reasons (as stated above) and should be struck to improve the efficiency of the court and the administration of justice.
- 13. I certify, under the penalties of perjury, that the foregoing is true and accurate. Further, I attest that the attached exhibits to this pleading are accurate and true representations of screen-shots depicting a PDF file received for the Defendant.

Dated this day of October 2, 2018

Respectfully submitted.

D. GEORGE SWEIGERT

Pro se non-attorney acting as a private attorney general for this public interest lawsuit

MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINITIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER OR OTHERWISE MAKE MOOT PURSUANT TO FRCP RULE 12(F)

EXHIBITS

MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINITIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER OR OTHERWISE MAKE MOOT PURSUANT TO FRCP RULE 12(F)

Case 1:18-cv-08653-VEC-SDA Document 42 Filed 10/19/18 Page 5 of 7

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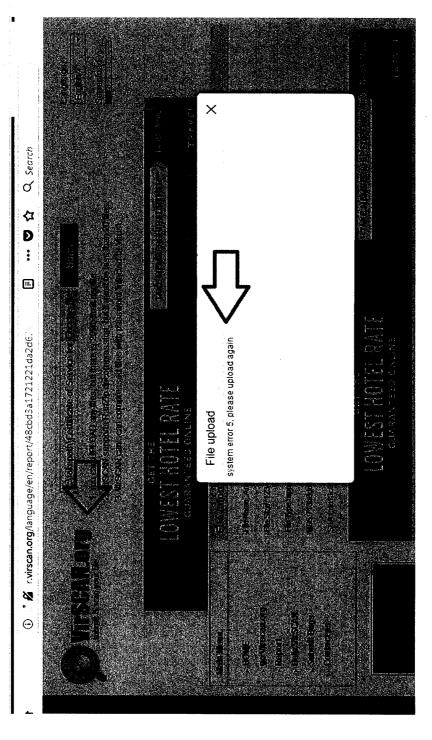
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MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINITIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER OR OTHERWISE MAKE MOOT PURSUANT TO FRCP RULE 12(F)

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Exhibit 4



MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF PLAINITIFF'S MOTION TO STRIKE DEFENDANT'S ANSWER OR OTHERWISE MAKE MOOT PURSUANT TO FRCP RULE 12(F)